

REMARKS

The foregoing amendments and these remarks are in response to the Office Action dated June 04, 2002. A request for a two month extension of time, together with the appropriate fee for the extension of time, is submitted with this amendment. At the time of the Office Action, Claims 1-3 and 6-17 were pending in the application.

In the Office Action, claims 7 and 12 were rejected under 35 U.S.C. §112, second paragraph due to the phrase "functional substances". Claims 7 and 12 are amended herein to incorporate the wording "at least one of lipophilic and hydrophilic" before the phrase "functional substances". This wording is based on the wording present in the specification as filed, on page 3, line 15. It is believed that this term is clear to one of ordinary skill in the art. Based upon the foregoing, withdrawal of the §112 rejections is respectfully requested.

Claim 1 was rejected under 35 U.S.C. §112, second paragraph, as being vague and indefinite for using the term "silica and silica derivatives". This phrase has been amended to read "spherical and non-spherical silica", as described in the specification. Claim 10 was rejected for being confusing because it was stated to be the same as the version submitted November 05, 2001. The marked-up version of claim 10 submitted on November 05, 2001 was the correct version, but the clean version of the claim was not amended. Applicant requests that the marked-up version of claim 10 submitted previously be taken as the amended version of the claim. Applicant has further amended claim 10 in accordance with the amendments made to claim 1 to overcome the 35 U.S.C. §112, second paragraph rejections.

Claims 1-3, 6-7, 9 and 14-17 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,187,439 to Elwakil. Claims 1-17 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,120,787 to Gustafsson.

Prior to discussing the cited prior art, a brief review of the features of claim 1 is appropriate. Claim 1 relates to a cosmetic powder to which a coating is associated. The powder includes at least one of the group consisting of excipients, pigments, and spherical and non-spherical silica. The coating includes at least one polymer or co-polymer belonging to the poly alpha hydroxy acids family. Notably, the coating can

interact with the skin of a wearer when said cosmetic powder is applied to the skin.

Applicant submits that claims 1 and 10 are not taught or suggested by the prior art. Applicant notes that Elwakil discloses encapsulated magnetic pigments having a solid coating on its surface. The coating comprises a vegetable oil and oxidized polyethylene.

The encapsulated particles are suitable for printing inks, as well as for magnetic recording systems, such as audio and video tapes and magnetic storage disks. Elwakil uses hydroxy acid as an element of the coating composition. It can be seen that Elwakil works in a very different field that does not relate to cosmetics, and uses hydroxy acid for a very different purpose to the present claims. In particular, Applicant notes that "upon cooling the system, the shell wall materials solidify and encapsulate the particles with a (hydrophobic) shell" (see column 12, lines 33-35). Thus, the "coating" of Elwakil is a solid shell, in which the hydroxy acid material is incorporated. The hydroxy acid material in the "coating" could not interact with the skin if the particle were placed on the skin of a wearer.

Gustaffson discloses parenterally administrable sustained release microparticles having a shell of biodegradable polymers as α -hydroxy acids. The shell further requires the use of stabilizing agents, plasticizing elements and additives for release control. The shell is biodegradable over a period of days or weeks, and is designed to break down in the body to release a biologically active substance entrapped in the microparticles. A cosmetic powder is typically washed off after 12-16 hours use at most. Thus, Gustaffson does not relate to a cosmetic powder in which the hydroxy acid coating can interact with the skin if the particle were placed on the skin of a wearer.


Thus, it can be seen that neither Elwakil nor Gustafsson teach or suggest a cosmetic powder having the features of claim 1. Claim 10 relates to a method of preparing a cosmetic powder which is also clearly not taught or suggested by Elwakil or Gustafsson.

Based upon the foregoing, claims 1 and 10 are believed to be in condition for allowance. Claims 2-9 and 11-17 are also believed to be allowable because of their reliance on allowable base claims, and because they contain features not taught or suggested by the prior art.

Applicant has made very effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. Nevertheless, Applicant invites the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. In view of the foregoing remarks, Applicant respectfully requests reconsideration and prompt allowance of the pending claims.

Respectfully submitted,

Date: 11/1/02


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Docket No. 1610-82

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of AVALLE

Application No. 09/800,463

Examiner: WILLIS, M.

Filed: March 08, 2001


Group Art Unit: 1617

For: COATED COSMETIC POWDER

ATTACHMENT TO AMENDMENT SHOWING MODIFICATIONS

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted to the Commissioner for Patents, Washington, DC 20231, via facsimile (fax no. 703-872-9306) on 11/1/02.


Mark D. Passler Reg No. 40,764

Commissioner for Patents
Washington, D.C. 20231

Sir:

In accordance with 37 CFR §1.121, the modifications made to the application are as follows:

IN THE CLAIMS

- 1 1. (Amended) A cosmetic powder to which a coating is associated wherein:
- 2 said powder comprises at least one of the group consisting of excipients, pigments,
- 3 and spherical and non-spherical silica [and silica derivatives]; and
- 4 said coating includes at least one polymer or co-polymer belonging to the poly
- 5 alpha hydroxy acids family, whereby said coating can interact with the skin of a wearer
- 6 when said cosmetic powder is applied to the skin.

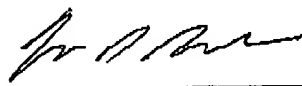
1 7. (Twice amended) The cosmetic powder according to claim 1, wherein said
2 coating includes at least one of lipid, lipophilic and hydrophilic function substances.

1 10. (Twice amended) A process for the preparation of a cosmetic powder
2 comprising the steps of:
3 preparation of a powder phase, wherein said powder comprises at least one of the
4 group consisting of excipients, pigments, and spherical and non-spherical silica [and
5 silica derivatives];
6 preparation of an alpha hydroxy acids polymer or co-polymer phase;
7 mixture of said powder phase and of said alpha hydroxy acids polymer or
8 co-polymer phase with a solvent in slurry or spray; and
9 evaporation of the solvent, to form an alpha hydroxy acids polymer or co-polymer
10 coating on said powder, whereby said coating can interact with the skin of a wearer when
11 said cosmetic powder is applied to the skin.

1 12. (Twice amended) The process according to claim 10, further comprising the
2 step of mixing said alpha hydroxy acids polymer or co-polymer phase with at least one of
3 lipid, lipophilic and hydrophilic functional substances.

Respectfully submitted,

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